

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A DENIAL OF  
A SUBSTANTIAL DEVELOPMENT PERMIT  
BY SKAGIT COUNTY TO THE DEPARTMENT  
OF GAME,

STATE OF WASHINGTON,  
DEPARTMENT OF GAME,

Appellant,

v.

SKAGIT COUNTY,

Respondent,

FRED C. CAMPBELL, NINA L.  
WELLS, et al.,

Intervenors,

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Amicus Curiae.

SHB No. 240

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal from the denial of a substantial  
development permit for construction of an Interpretive Center and

1 related developments, came before the Shorelines Hearings Board,  
2 Dave J. Mooney, Chairman, Chris Smith, Rodney Proctor, William A. Johnson,  
3 and David Akana (presiding), at a hearing in Burlington, Washington on  
4 August 10 and 11, 1978.

5 Appellant, Washington State Department of Game, was represented  
6 by Dennis D. Reynolds, Assistant Attorney General; respondent, Skagit  
7 County, was represented by Glenn Reed, Deputy Prosecuting Attorney;  
8 Intervenor appeared pro se and through their spokesman, Colonel F.  
9 Betz. Washington State Department of Ecology, Amicus Curiae, was  
10 represented by Robert E. Mack, Assistant Attorney General.

11 Intervenor's Petition to Intervene was heard and granted.

12 Witnesses were sworn; exhibits were admitted.

13 Having heard the testimony, having examined the exhibits, having  
14 considered the contentions of the parties and their posthearing briefs,  
15 the Shorelines Hearings Board makes the following

#### 16 FINDINGS OF FACT

##### 17 I

18 The proposed substantial development is the construction of an  
19 Interpretive Center building and associated facilities, and modifications  
20 to existing trails and facilities on and near 13,000 acres of an estuary  
21 of the Skagit River (a shoreline of statewide significance) commonly known  
22 as the Skagit Wildlife Recreation Area (WRA). One part of the proposal  
23 is a 1,931 square foot, octagonal, single-story, wood frame building which  
24 includes an instruction and display room, restrooms, laboratory, and  
25 offices. The building would be constructed at the existing Department  
26 Game (DOG) Headquarters upon a previously filled area, which area has been

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 approved for a septic sewage disposal system. An asphalt parking lot for  
2 twenty vehicles, with walkways and landscaping, would adjoin the building.  
3 The purpose of the indoor facility is to provide displays and instruction  
4 concerning the environment. Construction of this portion of the project  
5 will be in a rural environment designation of the Skagit Shoreline  
6 Master Program (SMP).

7 The second part of the proposal is the improvement to 4.4 miles  
8 of the approximately 14.2 miles of trails within the estuary by place-  
9 ment of some crushed rock, brush control, and grading, and possibly  
10 the paving of a section of Wiley Dike for use by the handicapped.  
11 Three five-foot square platforms with viewing blinds are to be  
12 constructed at different locations in the estuary to provide an  
13 opportunity to view the tidelands and marsh without disturbing wildlife.  
14 Development of this portion of the project is in a conservancy environ-  
15 ment designation of the SMP.

16 The proposed substantial development is located in an area zoned for  
17 agricultural use. The DOG has secured a flood control zone permit from  
18 the state for its development.

## 19 II

20 A permit for a substantial development was applied for from the  
21 County on May 7, 1976. After a period of study, preparation of an  
22 environmental impact statement (EIS), and negotiations, approval for the  
23 project was recommended by the Skagit County Planning Department if the  
24 DOG would agree to several conditions, two of which were unacceptable  
25 to the DOG:

- 26 . . .  
27 a) An Operations Management Committee be organized  
to consist of a representative of the Ducks

1 Unlimited Organization, a representative of  
2 the State Game Department, and a Skagit County  
3 Commissioner or his designee. The Operations  
4 Management Committee would be responsible for  
5 reviewing and approving the operational plans  
6 for the Interpretative Center, including but  
7 not limited to such items as periods of operation,  
8 hours of operation, restriction of public areas,  
9 expansion of services and facilities, and other  
10 items of special concern. The Committee would  
11 also be responsible for resolving complaints  
12 regarding the operation of the center and range  
13 and for initiating suggestions to the Game  
14 Department on any matter that they may wish to review.

- 15 d) The traffic and parking situation will be reviewed  
16 annually by the Planning Department and the  
17 County Engineer to determine if road improvements  
18 or increased parking is required. If it is  
19 determined that road improvements are necessary,  
20 the Game Department will share the cost of the  
21 improvements in proportion to the increase in  
22 traffic attributable to Interpretative Center.

23 . . . .

24 Because the above conditions were not accepted, the Planning Department  
25 recommended denial of the permit. The Skagit Planning Commission, noting  
26 that the conditions of the Planning Department were not accepted by the  
27 DOG, also recommended denial of the permit application. On July 5, 1978,  
28 the Skagit County Commissioners denied the application. Appeal was made  
29 to this Board. Citizen intervenors were permitted to participate as co-  
30 respondents at the hearing and alleged, as an additional issue, that the  
31 EIS prepared by the DOG was lacking.

### 32 III

33 Although the Interpretive Center can be physically located at any  
34 of several other areas, its value as an effective educational and  
35 regulatory tool to the WRA would be substantially diminished if it were  
36 required to locate elsewhere.

37 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

IV

The Interpretive Center building, to be constructed within an existing developed area, is not itself dependent on a location near the water. The accompanying system of trails, canoe areas and viewing platforms cannot be located in another area and yet serve its intended purpose, and is water dependent.

V

"Consumptive" use of the WRA, which includes hunting, has reached its saturation level of about 35,000 person-days per year. "Nonconsumptive" uses, which include appreciative uses such as bird-watching and boating, have increased substantially to 26,227 person days per year during the period beginning 1971 and ending in 1975. The proposed development would bring the total nonconsumptive uses of the WRA to about 45,000 person-days per year. While this latter figure is based on the DOG's best judgment and not upon a market or demand study, any increase in use which results in an adverse impact could be restricted by the DOG in order to preserve the resources of the WRA. Because nonconsumptive and consumptive uses generally do not occur at the same time, or in the same areas of the WRA, conflict between the two uses is not likely. During periods set aside for consumptive uses, the DOG plans to restrict nonconsumptive uses if necessary.

VI

The existing county road to the Interpretive Center site, the Mann Road, has been declared "substandard" by the County because of its right of way, roadbed and pavement deficiencies. Current traffic to the WRA is about 12,000 cars per year for consumptive and 8,000 cars per year for

1 nonconsumptive uses.

2 Traffic increases resulting from the availability of the  
3 developrent are estimated to be about 4,545 cars per year during the  
4 period from February to June of each year, or 909 cars per month.  
5 Additionally, thirty to forty busloads of students would be brought  
6 to the site each year. The majority of the additional traffic would  
7 probably be on the Mann Road, which can accommodate the expected  
8 average daily traffic increase, and would not significantly affect nearby  
9 private property. Vehicular traffic impacts would occur outside of the  
10 shoreline area.

11 Adequate parking for the expected increase of vehicle arrivals due t  
12 the proposal is provided in the design of the project. The DOG agreed  
13 with the County's request to provide further parking areas and to post  
14 signs where necessary on the Mann Road. The limitation of parking are  
15 can also be employed as a regulatory measure to control the excessive  
16 use of the site should the DOG's judgment regarding increased use be  
17 too low.

## 18 VII

19 Potential trespass and littering by WRA visitors upon neighboring  
20 property is possible. The Interpretive Center will serve to inform  
21 visitors about the area and to reduce the likelihood of casual trespass.  
22 The Center can also serve as a point from which to regulate use,  
23 including the number of nonconsumptive users, in the WRA by those  
24 entering and leaving at that location. The prospect of a long walk  
25 into and out of the WRA would itself discourage many visitors from  
26 actually entering the marsh after leaving the Interpretive Center.

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

VIII

The WRA is a unique, environmentally sensitive area. The project, as proposed, would not have a substantial adverse impact on the wildlife environment, which includes many numbers and species of birds and mammals. The site is used primarily as a wintering and rest area for birds rather than as their nesting area. No significant impact or adverse effect can be reasonably expected upon the resource from the proposed nonconsumptive uses. Moreover, although the WRA is unique, the system of dikes and their periodic maintenance throughout the area underscore human presence.

IX

The Skagit County Shoreline Master Program<sup>1</sup> provides, as a goal, for the compatible use of shorelines in relation to their physical and environmental characteristics. Section 4.02. Each portion of the proposed substantial development is compatible with the environmental designation in which it lies.

The Rural designation is "typified by low overall structural density and low to moderate intensity of uses." Section 6.04(3)(a). Low intensity uses and development are permitted in undeveloped rural areas. Recreational facilities and structures in agricultural areas are recommended to be compatible with the latter activities, to reflect the character of the area, and to be managed so as not to preclude future agricultural uses. Section 6.04(3)(d). The site of the proposed building and parking lot

---

1. The Skagit County Shoreline Master Program was approved by the Department of Ecology on October 5, 1976 by Order DE 77-16 filed on September 9, 1977. WAC 173-19-370.

1 is within the DOG building complex, which is a developed area. The  
2 proposed construction and use, on a filled area, is compatible with  
3 normal activities abutting the site.

4 The Conservancy designation "is a shoreline area containing natural  
5 resources, processes and features that can be utilized or managed without  
6 significant modification of shorelines or topography." Section 6.04(4)(a).  
7 Such areas have critical natural and cultural features which require a  
8 low overall density of people and structures. Section 6.04(4)(c). The  
9 improvement to existing trails and the addition of three viewing platforms  
10 in the portion of the 13,000 acre WRA in the Conservancy designation  
11 is without environmental significance. The expected increase of  
12 nonconsumptive uses in the marsh would result in an "overall density of  
13 people" which would be comparable to present consumptive uses.

14 X

15 Policies for recreation use activities provide that passive shoreline  
16 recreational access minimize the concentration of users at specific point  
17 in the shoreline area. Section 7.12.B(2). The network of dikes would  
18 tend to disperse the visitors throughout the WRA and minimize concentra-  
19 tion of use. The unique shoreline would not be damaged from any  
20 "structural" recreational developments or from any higher forms of  
21 recreation. While there are several other access points to the WRA,  
22 the Interpretive Center would probably concentrate nonconsumptive users  
23 at the entrance but such is not inconsistent with the master program  
24 provision. The use regulations for both Rural and Conservancy designatio  
25 permit the proposed development. See Section 7.12.2.A(3 and 4). That an  
26 EIS has been prepared does not bear on whether the development involves

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER



1 "significant numbers or types of structures" under the terms of the SMP,  
2 contrary to the County's position. The portion of the development on the  
3 unique shoreline of the WRA will be used for non-intensive, non-structural  
4 activities, i.e., birdwatching and canoeing.

## 5 XI

6 The master program provision relating to scientific and  
7 educational resources recommends protection or preservation of sensitive  
8 natural areas. Section 7.14.1.A(3). Thus, development which would  
9 adversely affect, damage or diminish such resource is not permitted.  
10 Section 7.14.2.B(2)(b). The proposed development would not adversely  
11 affect the WRA and is consistent with the above provisions.

12 The master program allows educational facilities and Interpretive  
13 Centers as a conditional use in a Rural and Conservancy environment.  
14 Section 7.14.2.A(3 and 4). A permit for a conditional use is appropriate  
15 where the proposed use would be compatible with other uses, would not  
16 cause unreasonably adverse impacts on the environment, would not interfere  
17 with lawful use of public shorelines, would be visually compatible with  
18 the adjoining features and designations, and will be consistent with the  
19 general intent of the master program. Section 11.03. No conditional use  
20 permit was or is necessary for the proposed development under the terms of  
21 the master program because the master program was not adopted or approved  
22 at the time of permit application. We find the proposal consistent with  
23 the concerns of Section 11.03, however.

## 24 XII

25 Section 7.17.1.B(2) of the master program recommends that roads  
26 and parking areas locate out of the designated parks, scenic, natural,  
27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 historic, or recreation areas. The proposed development, with its  
2 paved twenty car capacity parking lot, lies within a developed area.  
3 Being on the fringe of the WRA, the proposed parking lot is not  
4 inconsistent with the above provision.

5 XIII

6 Any Conclusion of Law which should be deemed a Finding of Fact  
7 is hereby adopted as such.

8 From these Findings the Board comes to these

9 CONCLUSIONS OF LAW

10 I

11 The proposed substantial development is tested for consistency with  
12 the policy of RCW 90.58.020, the Department of Ecology guidelines, and the  
13 master program so far as can be ascertained. RCW 90.58.140(2)(a). The  
14 master program was ascertainable at the time of permit application deni.

15 II

16 The proposed substantial development is consistent with the pertinent  
17 master program provisions.

18 III

19 The policy of the Shoreline Management Act (SMA) is to plan for  
20 and foster "all reasonable and appropriate uses" and development of the  
21 shoreline in a manner which will "promote and enhance the public interest"  
22 while protecting its natural resources. RCW 90.58.020. The Interpretive  
23 Center and the trails involve a recreational or educational use of the  
24 shoreline. Both uses are reasonable and appropriate to the physical  
25 characteristics of the WRA and the adjacent areas. The development would  
26 promote and enhance the greater public interest by making available

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER 10

1 information and shoreline access to the people generally without  
2 significant detriment to the resource. Such public interest involves a  
3 state-wide interest which is of first preference on a shoreline of statewide  
4 significance. See RCW 90.58.020 and chapter 5 of the SMP. A development  
5 which would increase public access to shorelines provides an opportunity  
6 for substantial numbers of people to enjoy the shorelines of the  
7 state. RCW 90.58.020. Where the shoreline is publicly owned shoreline  
8 of statewide significance, such access to enjoy the shorelines is most  
9 beneficial, even though portions of a development, in this case the  
10 Interpretive Center and parking lot, are not strictly "water dependent."  
11 In any event, water dependency is not mandated by RCW 90.58.020, but  
12 rather, it permits non-water dependent uses where public enjoyment of  
13 the shorelines is enhanced. Smith v. City of Seattle, SHB No. 158.

4 The proposed substantial development is consistent with the policy of  
15 RCW 90.58.020 and the guidelines.

#### 16 IV

17 The conditions (a) and (d) sought to be placed in a permit by the  
18 County as a condition of permit issuance to the DOG cannot be imposed.  
19 Condition (a), relating to operational plans for the WRA, would interfere  
20 with the authority of the Game Commission to control all public hunting  
21 and recreational uses as is provided by state law. The decision of the  
22 committee formed pursuant to the terms of the condition should be advisory  
23 at most, which is acceptable to the DOG.

24 Condition (d), which requires the DOG to share in the cost of  
25 road improvements outside the shoreline area to the site, is not within  
26

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER 11

1 the authority of the SMA.

2 The DOG has accepted other conditions proposed by the Planning  
3 Department and Planning Commission.

4 V

5 Intervenors did not prove that the environmental impact statement  
6 prepared by the DOG and used by the County was inadequate.

7 VI

8 Any Finding of Fact which should be deemed as a Conclusion of Law  
9 is hereby adopted as such.

10 From these Conclusions the Board enters this


11 ORDER

12 The decision of Skagit County is reversed and the matter is  
13 remanded for issuance of a substantial development permit to the Depart-  
14 ment of Game for the Interpretive Center and its related facilities  
15 with the conditions recommended by the Planning Commission except as  
16 modified herein by Conclusion of Law IV.

17 DATED this 27<sup>th</sup> day of September, 1978.


18 SHORELINES HEARINGS BOARD

19   
20 DAVE N. MOONEY, Chairman

21   
22 CHRIS SMITH, Member

23   
24 DAVID A. AKANA, Member

25   
26 RODNEY PROCTOR, Member

27   
WILLIAM A. JOHNSON, Member

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER